

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1300, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 12-26-7-2 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does
- 5 not apply to the commitment of an individual if the individual has
- 6 previously been committed under IC 12-26-6.
- 7 (b) A proceeding for the commitment of an individual who appears
- 8 to be suffering from a chronic mental illness may be begun by filing
- 9 with a court having jurisdiction a written petition by any of the
- 10 following:
- 11 (1) A health officer.
- 12 (2) A police officer.
- 13 (3) A friend of the individual.
- 14 (4) A relative of the individual.
- 15 (5) The spouse of the individual.
- 16 (6) A guardian of the individual.
- 17 (7) The superintendent of a facility where the individual is present.
- 18 (8) A prosecuting attorney in accordance with IC 35-36-2-4.
- 19 (9) A prosecuting attorney or the attorney for a county office if

civil commitment proceedings are initiated under IC 31-34-19-3 or IC 31-37-18-3.

(10) A third party that contracts with the division of mental health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4."

Page 4, after line 7, begin a new paragraph and insert:

"SECTION 5. IC 35-36-3-1, AS AMENDED BY P.L.215-2001, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of ~~his~~ a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists; **or**

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology. ~~or physicians,~~

At least one (1) of ~~whom~~ **the individuals appointed under this subsection** must be a psychiatrist. ~~who~~ **However, none may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed** shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution.~~ **The division of mental health and addiction shall provide competency restoration services or**

enter into a contract for the provision of competency restoration services by a third party in the:

- (1) location where the defendant currently resides; or
- (2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed sentence in the department of correction at the time the defendant is committed to the division of mental health and addiction under this section, the division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party at a department of correction facility agreed upon by the division of mental health and addiction or the third party contractor and the department of correction.

SECTION 6. IC 35-36-3-2, AS AMENDED BY P.L.215-2001, SECTION 110, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Whenever the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense:

- (1) ~~the division of mental health and addiction, through the superintendent of the appropriate psychiatric institution,~~
superintendent of the state institution (as defined in IC 12-7-2-184); or
- (2) if the division of mental health and addiction entered into a contract for the provision of competency restoration services, the director or medical director of the third party contractor;

shall certify that fact to the proper court, which shall enter an order directing the sheriff to return the defendant. The court ~~may~~ shall enter such an order immediately after being sufficiently advised of the defendant's attainment of the ability to understand the proceedings and assist in the preparation of the defendant's defense. Upon the return to court of any defendant committed under section 1 of this chapter, the court shall hold the trial as if no delay or postponement had occurred.

SECTION 7. IC 35-36-3-3, AS AMENDED BY P.L.215-2001, SECTION 111, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2004]: Sec. 3. (a) Within ninety (90) days after:

(1) a defendant's ~~admittance to a psychiatric institution; the superintendent of the psychiatric institution~~ admission to a state institution (as defined in IC 12-7-2-184); or

(2) the initiation of competency restoration services to a defendant by a third party contractor;

the superintendent of the state institution (as defined in IC 12-7-2-184) or the director or medical director of the third party contractor, if the division of mental health and addiction has entered into a contract for the provision of competency restoration services by a third party, shall certify to the proper court whether the defendant has a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense within the foreseeable future.

(b) If a substantial probability does not exist, the ~~division of mental health and addiction state institution (as defined in IC 12-7-2-184) or the third party contractor~~ shall initiate regular commitment proceedings under IC 12-26. If a substantial probability does exist, the ~~division of mental health and addiction state institution (as defined in IC 12-7-2-184) or third party contractor~~ shall retain the defendant:

(1) until the defendant attains the ability to understand the proceedings and assist in the preparation of the defendant's defense and is returned to the proper court for trial; or

(2) for six (6) months from the date of the:

(A) defendant's ~~admittance~~ admission to a state institution (as defined in IC 12-7-2-184); or

(B) initiation of competency restoration services by a third party contractor;

whichever first occurs.

SECTION 8. IC 35-36-3-4, AS AMENDED BY P.L.215-2001, SECTION 112, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found under section 3 of this chapter to have had a substantial probability of attaining the ability to understand the proceedings and assist in the preparation of the defendant's defense has not attained that ability within six (6) months after the date of the:

1 (1) defendant's ~~admittance to a psychiatric institution; the division~~
 2 ~~of mental health and addiction~~ admission to a state institution
 3 (as defined in IC 12-7-2-184); or
 4 (2) initiation of competency restoration services by a third
 5 party contractor;
 6 the state institution (as defined in IC 12-7-2-184) or the third
 7 party contractor, if the division of mental health and addiction has
 8 entered into a contract for the provision of competency
 9 restoration services by a third party, shall institute regular
 10 commitment proceedings under IC 12-26."
 11 Page 3, line 14, delete "clear and convincing" and insert "**a**
 12 **preponderance of the**".
 13 Renumber all SECTIONS consecutively.
 (Reference is to HB 1300 as reprinted February 5, 2004.)

and when so amended that said bill do pass.

Committee Vote: Yeas 7, Nays 3.

Long

Chairperson